

EXHIBIT

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

-----:
ULTIMA SERVICES CORPORATION, :
:
Plaintiff, :
:
vs. : Case No.:
: 2:20-cv-00041-
U.S. DEPARTMENT OF AGRICULTURE, : DCLC-CRW
et al., :
:
Defendants. :
-----:

REMOTE DEPOSITION OF DANIEL CHOW

DATE: March 10, 2022
TIME: 10:06 a.m.
LOCATION: Rockville, Maryland
REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

Veritext Legal Solutions
1250 Eye Street, NW, Suite 350
Washington, D.C. 20005

APPEARANCES

On behalf of Plaintiff:
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On behalf of Defendants:

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ALSO PRESENT:

Josephine Arnold, Esquire, MBDA

PROCEEDINGS

WHEREUPON,

DANIEL CHOW

called as a witness, and having been sworn by the notary public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. ROSMAN:

Q Good morning, Mr. Chow. My name is Michael Rosman. I represent the plaintiff in the lawsuit which you're about to give a deposition.

Have you ever been deposed before?

A None before this one.

Q Okay. Why don't you just state your name and address for the record, please.

A My name is Daniel Chow, C-H-O-W. My address is 11910 Kings Bridge Way, Rockville, Maryland 20852.

Q Great. Thank you.

So let me just explain. This is a proceeding before trial in a lawsuit. You've been sworn to tell the truth. I'm going to ask a

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Counsel for Defendant	109

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(* Exhibits attached to transcript.)

1 series of questions which you should answer to the
2 best of your knowledge and ability. If you don't
3 understand a question, if I've said something
4 confusing, you can ask for some clarification and
5 I might rephrase it. If you need a break at some
6 point, you can ask me for that and we'll try to
7 arrange one as quickly as we can.

Do you have any questions about that?

A None. Thank you.

(Chow Exhibit Number 1 was marked for identification.)

BY MR. ROSMAN:

Q Okay. I've marked as Plaintiff's Exhibit 1 your CV or what was given to us as your CV.

Could you just confirm that that is in fact your CV?

A Yes, this is my CV.

Q Okay. I just have a few questions about it. I noticed in the first position at the U.S. Bureau of Labor Statistics it says that you authored professional journal articles and I was

<p style="text-align: right;">Page 30</p> <p>1 A It should, yes.</p> <p>2 Q What kind of information?</p> <p>3 A I would say that it would say whether or</p> <p>4 not they had a contract, how many of those</p> <p>5 contracts.</p> <p>6 Q Okay. Anything else?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q I think in your report you said that the</p> <p>9 FPDS files you were given contained information</p> <p>10 about the SDB status of firms; is that right?</p> <p>11 A Correct.</p> <p>12 Q And it contained information about the</p> <p>13 SDB status of firms for both the small and the</p> <p>14 non-small files?</p> <p>15 A Correct.</p> <p>16 (Discussion off the record.)</p> <p>17 (Whereupon, Ms. Arnold entered the</p> <p>18 proceedings.)</p> <p>19 BY MR. ROSMAN:</p> <p>20 Q Were there any SDBs in the file of firms</p> <p>21 that were not small?</p> <p>22 A I believe so, yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. ROSMAN: Fine.</p> <p>2 MS. DINAN: Thank you.</p> <p>3 BY MR. ROSMAN:</p> <p>4 Q So my understanding was Dr. Rubinovitz</p> <p>5 only looked at small businesses in his study.</p> <p>6 Did you have a different understanding?</p> <p>7 A My understanding is consistent with his.</p> <p>8 The non-small businesses, again, may have had some</p> <p>9 change in status at some point, so it was -- and</p> <p>10 the data was not provided to me from SBA presorted</p> <p>11 for just small businesses, so I essentially had to</p> <p>12 do the work in order to get at those small</p> <p>13 businesses.</p> <p>14 Q Okay. I'm trying to understand this.</p> <p>15 You say they gave you two files, one with small</p> <p>16 businesses and one with not small businesses, but</p> <p>17 you also just testified that there was no sorting</p> <p>18 of businesses into small and not small and I'm</p> <p>19 trying to reconcile those two statements.</p> <p>20 A I think what I'm trying to tell you is</p> <p>21 that they did not filter out and remove the</p> <p>22 non-small businesses, it was simply given to me as</p>
<p style="text-align: right;">Page 31</p> <p>1 Q So the not small -- I'm calling it the</p> <p>2 not small file, but you had a -- one of the two</p> <p>3 files you were given were about firms that were</p> <p>4 not deemed small businesses, right?</p> <p>5 A Correct.</p> <p>6 Q But some of them were small and</p> <p>7 disadvantaged businesses; is that right?</p> <p>8 A So I did not dissect that data in such</p> <p>9 detail in order to determine distribution of</p> <p>10 small, not small. The number of not small</p> <p>11 companies may have at one point been small and may</p> <p>12 have been SDBs as well, so -- the not small</p> <p>13 companies may have also been minority owned as</p> <p>14 well, so it was -- SBA simply gave me that data</p> <p>15 and it is consistent with I believe what was done</p> <p>16 in the previous Rubinovitz report.</p> <p>17 Q Okay.</p> <p>18 MS. DINAN: Michael, I just want to let</p> <p>19 the record reflect that Josephine Arnold, counsel</p> <p>20 for MBDA, has joined. Sorry about that. I should</p> <p>21 have done that when she joined. I don't mean to</p> <p>22 interrupt.</p>	<p style="text-align: right;">Page 33</p> <p>1 one large dataset. I had to do the work to find</p> <p>2 out which ones were small and separate them from</p> <p>3 the non-small.</p> <p>4 Q Okay. Were you given one file or two</p> <p>5 files of FPDS data?</p> <p>6 A I was given I believe one file at that</p> <p>7 time.</p> <p>8 Q Okay. I'm going to ask you to look at</p> <p>9 your report. Give me a second then.</p> <p>10 (Chow Exhibit Number 3 was</p> <p>11 marked for identification.)</p> <p>12 BY MR. ROSMAN:</p> <p>13 Q Okay. If I did that correctly,</p> <p>14 something that is stamped Plaintiff's Exhibit 3</p> <p>15 should somehow have magically appeared in people's</p> <p>16 Exhibit Share.</p> <p>17 A Yes, I see it.</p> <p>18 Q Okay. So if you could look down at page</p> <p>19 three or if you happen to have a copy with you in</p> <p>20 hard copy, you can just look at that.</p> <p>21 On page three of your report you wrote,</p> <p>22 "SBA also provided two datasets from the Federal</p>

<p style="text-align: right;">Page 102</p> <p>1 Q Well, okay, but I asked whether that</p> <p>2 meant they were two and-a-half times more likely?</p> <p>3 A I would say so, yes.</p> <p>4 Q Okay. And in an earlier part of your</p> <p>5 report on page seven you say, "The odds of winning</p> <p>6 a contract for SDBs who do not participate in the</p> <p>7 8(a) program is about 37 percent less than for</p> <p>8 other firms." And I just want to make sure I</p> <p>9 understand who the other firms are in this</p> <p>10 context.</p> <p>11 A Okay.</p> <p>12 Q Would the other firms be 8(a) firms,</p> <p>13 non-SDB firms, minority-owned firms that are not</p> <p>14 SDB firms? Is all of that in your calculation</p> <p>15 there?</p> <p>16 A Yes. This -- this result says that SDBs</p> <p>17 that are not 8(a) are -- have odds ratios that are</p> <p>18 less than one given that the other types of</p> <p>19 firms -- in this case the other categories, the</p> <p>20 8(a)s, the minority-owned, the women-owned, et</p> <p>21 cetera -- are accounted for.</p> <p>22 Q Okay. So the other firms in your</p>	<p style="text-align: right;">Page 104</p> <p>1 A To all other firms that --</p> <p>2 Q That don't have that characteristic.</p> <p>3 Even if they fall into some other like, you</p> <p>4 know --</p> <p>5 A Right.</p> <p>6 Q -- an 8(a) firm?</p> <p>7 A So it would be, for instance for the SDB</p> <p>8 non-8(a), it would be an odds ratio of all those</p> <p>9 firms that had that characteristic, non-SDB,</p> <p>10 non-8(a), versus all the other firm types shown in</p> <p>11 Table 3.</p> <p>12 Q Okay. And that is true even though SDB</p> <p>13 not 8(a) firms may also be minority-owned firms,</p> <p>14 right?</p> <p>15 A There will be some overlap. I don't</p> <p>16 know to what extent that occurs. But if there is</p> <p>17 a firm that is overlapping with some other</p> <p>18 categories as you pointed out, that would be</p> <p>19 accounted for.</p> <p>20 Q And what do you mean by "accounted for"?</p> <p>21 A Meaning if I did a regression of SDB not</p> <p>22 8(a) versus, say, women-owned firms that are</p>
<p style="text-align: right;">Page 103</p> <p>1 sentence included 8(a) businesses, right?</p> <p>2 A Yes.</p> <p>3 Q They would include women-owned firms</p> <p>4 that are not non- 8(a) SDBs, right?</p> <p>5 A Yes, to the extent that the women-owned</p> <p>6 category includes them, yes.</p> <p>7 Q Okay. And that sort of leads to my next</p> <p>8 question. Are these categories mutually</p> <p>9 exclusive? Obviously 8(a) and SDB non-8(a) are</p> <p>10 mutually exclusive, but a firm can be both women</p> <p>11 owned and an 8(a) firm, right?</p> <p>12 A Correct.</p> <p>13 Q Okay. And it can be both a</p> <p>14 minority-owned firm and an 8(a) firm, right?</p> <p>15 A Correct.</p> <p>16 Q And it can be both a minority-owned firm</p> <p>17 and an SDB not 8(a) firm, right?</p> <p>18 A Yes.</p> <p>19 Q Okay. So when we see an odds ratio, it</p> <p>20 is a comparison of that -- the firms with that</p> <p>21 characteristic to all other firms that don't have</p> <p>22 that characteristic, right?</p>	<p style="text-align: right;">Page 105</p> <p>1 HUBZones, okay, so the regression would account</p> <p>2 for the fact that minority-owned -- women-owned</p> <p>3 firm in a HUBZone, you know, their data is</p> <p>4 included as part of the regression.</p> <p>5 Q Okay.</p> <p>6 A Now, there may be other firms that are</p> <p>7 women owned but not in a HUBZone that would be</p> <p>8 included for the SDB not 8(a) odds ratio.</p> <p>9 Q They would be included as long as they</p> <p>10 are not SDBs who are not 8(a)s, right?</p> <p>11 A Yes.</p> <p>12 Q Okay. I think I got that.</p> <p>13 All right. Do you have an opinion about</p> <p>14 what the relevant market is in this case?</p> <p>15 A In this legal case?</p> <p>16 Q Yes, in this legal case.</p> <p>17 A I have -- no, I -- I don't know.</p> <p>18 Q Okay.</p> <p>19 A I don't have an opinion. I don't know</p> <p>20 what the relevant market is in this case.</p> <p>21 Q Okay. Do you know what industry Ultima,</p> <p>22 the plaintiff, operates in?</p>